

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

**RULING: Defense Motion:
Close Court to Litigate
Admissibility of MRE 404(b)
Evidence**

29 August 2012

The Government moves to make a preliminary determination on the admissibility of evidence of three crimes, wrongs, or acts, under MRE 404(b) and on the use of such evidence to rebut the offer of a pertinent character trait under MRE 404(a). The evidence the Government seeks to admit is:

1. **MRE 404(B) act 1:** On 28 June 2008, (b) (6) B.M. observed postings by the accused on YouTube using “buzzwords” such as top secret, secret, classified and SCIF, against his training. As corrective training, (b) (6) B.M. required the accused to give a presentation to the platoon at formation, present a PowerPoint presentation to (b) (6) B.M. and prepare a written product. The accused’s presentation to the platoon discussed information security, proper handling of information, a Soldier’s obligation to protect and not expose classified material, the possibility that a Soldier’s disclosure that he or she has access to classified material may be dangerous to the Soldier, and that enemy forces are trying to collect information on the U.S. Military. The accused’s written product and PowerPoint presentation defined secret information and identified the type of people who try to collect information for use against the United States, such as foreign governments, enemies, spies, hackers, etc.
2. **MRE 404(b) act 2:**
3. **MRE 404(b) act 3:**

The Defense moves to close the court during the Article 39(a) sessions of the court during which evidence is adduced, argument is made, and the court’s ruling announced with respect to on the Government’s MRE 404(b) motion regarding MRE 404(b) acts 2 and 3 above because this case has received and continues to receive media attention and public airing the facts giving rise to this motion will impact PFC Manning’s ability to receive a fair trial and there is no alternative to closure that will protect against that harm.

The Law:

1. The First Amendment protects the public’s right to an open trial. The Sixth Amendment protects the accused’s right to a public trial. Both Constitutional Amendments and RCM 806 provide that courts-martial shall be open to the public unless (1) there is a substantial probability that an overriding interest will be prejudiced if the proceedings remain open; (2) closure is no

broadier than necessary to protect the overriding interest; (3) reasonable alternatives to closure were considered but found to be inadequate; and (4) the military judge makes case-specific findings on the record justifying closure *U.S. v. Hershey*, 20 M.J. 433 (C.M.A. 1985); *ABC Inc. v. Powell*, 47 M.J. 363, 365 (C.M.A. 1997).


2. The trial court must consider alternatives to closure even if not offered by the parties. Trial courts must take every reasonable measure to accommodate public attendance at criminal trials. *Presley v. Georgia*, 558 U.S. 209 (2010).

Conclusions of Law:

1. The Court takes judicial notice that there has been consistent and extensive media coverage of this case.
2. The Defense has demonstrated that preventing the fact-finder from pretrial bias from pretrial publicity of the underlying facts of uncharged conduct by the accused as offered by the Government as MRE 404(b) acts 2 and 3 is an overriding interest likely to be prejudiced if the proceedings remain open.
3. Closure of the Article 39(a) session during which the Government's MRE 404(b) motion is litigated for MRE 404(b) acts 2 and 3 is more broad than necessary to protect that interest. There are reasonable alternatives to closing the proceedings.
4. Identification of the underlying facts of MRE 404(b) acts 2 and 3 are not necessary during oral argument for the parties to litigate the Government's MRE 404(b) motion regarding the reasons why the evidence should or should not be admitted or why the evidence is or is not admissible under MRE 403.

RULING: The Court shall remain open during the litigation of the Government's MRE 404(b) motion. The parties shall identify the acts at issue as MRE 404(b) act 2 and MRE 404(b) act 3 without going into the underlying specifics.

So **Ordered** this 29th day of August 2012.


DENISE R. LIND
COL, JA
Chief Judge, 1st Judicial Circuit